

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 26, 2005

SENATE BILL

No. 561

Introduced by Senators Runner and Torlakson
(Principal coauthor: Assembly Member Canciamilla)

February 18, 2005

An act ~~relating to transportation~~, to amend Sections 143 and 149 of the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 561, as amended, Runner. ~~Transportation projects~~ *Toll road agreements.*

Existing law, until January 1, 2003, authorized the Department of Transportation to solicit proposals and enter into agreements with private entities or consortia for the construction and lease of no more than 2 toll road projects, and specified the terms and requirements applicable to those projects. Existing law authorizes the department to construct high-occupancy vehicle and other preferential lanes.

This bill would instead authorize the department to enter into comprehensive development franchise agreements with public and private entities or consortia for specified types of transportation projects, as defined, subject to certain requirements and conditions. The bill would authorize tolls to be collected after the termination of a franchise agreement period, subject to approval of the California Transportation Commission. The bill would require a franchise agreement to allow the department to open a competitive state facility in the same corridor. The bill would authorize the department to construct and operate high-occupancy vehicle and other preferential lanes as toll facilities. The bill would enact other related provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that the Department of Transportation has full possession and control of all state highways and all property and rights in property acquired for state highway purposes. Existing law authorizes the department to enter into contracts required for the performance of its duties.~~

~~This bill would state the intent of the Legislature to authorize the Department of Transportation to enter into agreements with public and private entities for transportation projects.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~
yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 143 of the Streets and Highways Code is*
2 *amended to read:*

3 143. (a) ~~The Pursuant to Chapter 3 (commencing with~~
4 ~~Section 30800) of Division 17, the department, in cooperation~~
5 ~~with regional transportation agencies, may solicit proposals,~~
6 ~~negotiate, and enter into comprehensive development franchise~~
7 ~~agreements with public and private entities, or consortia thereof,~~
8 ~~for the construction by, and lease to, private entities of two public~~
9 ~~transportation demonstration projects. The department shall not~~
10 ~~enter into an agreement for any new proposals under this~~
11 ~~authority after January 1, 2003.~~

12 (b) For the purpose of facilitating those *transportation*
13 projects, the agreements *between the parties* may include
14 provisions for the lease of rights-of-way in, and airspace over or
15 under, *these* state highways, for the granting of necessary
16 easements, and for the issuance of permits or other authorizations
17 to enable the ~~private entity to construct~~ *construction of*
18 transportation facilities supplemental to existing state-owned
19 and operated transportation facilities. Facilities constructed by a
20 ~~private~~ *an* entity pursuant to *an agreement* under this section
21 shall, at all times, be owned by the ~~state~~ *department as an*
22 ~~operational part of the state highway system.~~ The agreement
23 shall provide for the lease of those facilities to the ~~private~~
24 ~~franchised~~ *entity for up to 35 years to recover private*
25 ~~investments in the form of expended funds together with a~~

1 *reasonable rate of return on those funds, negotiated by the*
2 *department with the contracting entity.* In consideration therefor,
3 the agreement shall provide for complete reversion of the
4 privately constructed facility *and the right to collect tolls to the*
5 ~~state department and any other government entity participating~~
6 ~~in the funding of the project, if any,~~ at the expiration of the lease
7 at no charge to the ~~state department or other government entity.~~

8 (c) The department may exercise any power possessed by it
9 with respect to the development and construction of state
10 transportation projects to facilitate the development and
11 construction of transportation *toll projects initiated* pursuant to
12 this section. Agreements for maintenance and police services
13 entered into pursuant to this section ~~shall may~~ provide for ~~full~~
14 ~~some form of negotiated~~ reimbursement for services rendered by
15 the department ~~or and~~ other state agencies. The department may
16 provide services for which it is reimbursed with respect to
17 preliminary planning, environmental certification, ~~—and~~
18 ~~environmental review,~~ preliminary design, *design, right-of-way*
19 *acquisition, and construction of* ~~the demonstration~~ these
20 transportation projects.

21 (d) (1) Agreements entered into pursuant to this section shall
22 authorize the ~~private contracting~~ entity to impose tolls for use of
23 a facility constructed by it, and shall require that over the term of
24 the ~~lease franchise,~~ that the toll revenues *will* be applied to
25 payment ~~some or all of the private entity's~~ capital outlay costs
26 for the project, the costs associated with operations, toll
27 collection, administration of the facility, reimbursement to the
28 ~~state department or other government entity~~ for the costs of
29 ~~maintenance and police~~ services *to develop and maintain the*
30 *project, police services,* and a reasonable return on investment to
31 the ~~private contracting~~ entity. The agreement shall require that
32 *notwithstanding Sections 164, 188, and 188.1,* any excess toll
33 revenue either be applied to any indebtedness incurred by the
34 ~~private contracting~~ entity with respect to the project or be paid
35 into the State Highway Account *for use in the same*
36 *transportation corridor as the toll facility,* or both.

37 (2) The ~~authority to collect~~ collection of tolls for the use of
38 these facilities ~~shall terminate~~ *may be extended by the*
39 *commission* at the expiration of the franchise agreement.

(e) The plans and specifications for each *transportation* project constructed pursuant to this section shall comply with the department's *then-existing* standards for *similar* state transportation projects. A facility constructed by and leased to-a private *another* entity shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) The assignment authorized by subdivision (c) of Section 130240 of the Public Utilities Code is consistent with this section.

(g) *Each franchise agreement entered into by the department shall include provisions authorizing the department to open competitive facilities to traffic within the designated corridor. Each franchise agreement entered into by the department shall also include provisions authorizing the department to construct any safety project needed within the designated corridor.*

(h) *Nothing in this section is intended to infringe on the authority to develop high-occupancy toll lanes pursuant to Sections 149.4, 149.5, and 149.6.*

(i) *As used in this section, "transportation projects" mean any of the following:*

(1) *Shared high-occupancy vehicle lanes where high-occupancy vehicles are permitted free passage.*

(2) *Dedicated exclusive truck lanes.*

(3) *Mixed-flow toll lanes and free lanes.*

(4) *Toll lanes for all vehicles other high-occupancy vehicles.*

SEC. 2. *Section 149 of the Streets and Highways Code is amended to read:*

149. The department may construct exclusive or preferential lanes for buses only or for buses and other high-occupancy vehicles, and may authorize or permit such exclusive or preferential use of designated lanes on existing highways that are part of the State Highway System. Prior to constructing such lanes, the department shall conduct competent engineering estimates of the effect of such lanes on safety, congestion, and highway capacity.

To the extent they are available, the department may apply for and use federal aid funds appropriated for the design,

1 construction, and use of such exclusive or preferential lanes, but
2 may also use other State Highway Account funds, including
3 other federal aid funds, for those purposes where proper and
4 desirable.

5 *The department may construct and operate exclusive or*
6 *preferential lanes under this section as toll facilities.*

7 This section shall be known and may be cited as the Carrell
8 Act.

9 *SEC. 3. This act is an urgency statute necessary for the*
10 *immediate preservation of the public peace, health, or safety*
11 *within the meaning of Article IV of the Constitution and shall go*
12 *into immediate effect. The facts constituting the necessity are:*

13 *In order to provide the state with the necessary tools to*
14 *alleviate the current transportation crisis as quickly as possible,*
15 *it is necessary that this act take effect immediately.*

16 ~~SECTION 1. It is the intent of the Legislature to authorize the~~
17 ~~Department of Transportation to enter into agreements with~~
18 ~~public and private entities for transportation projects, including,~~
19 ~~but not limited to, dedicated exclusive truck roads and toll roads.~~